

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

TZANN FANG, M.D.,

Plaintiff,

v.

Case No. 3:19-CV-00362

HYATT CORPORATION, et al.

Defendants.

HYATT CORPORATION

and

TYSONS CORNER HOTEL I, LLC

Third Party Plaintiffs

v.

HARVEY-CLEARY BUILDERS

**Serve: CT Corporation System, registered agent :
4701 Cox Road, Suite 285
Glen Allen, Virginia 23060**

**CALLISON RTKL, INC (F/K/A RTKL
ARCHITECTS)**

**Serve: CT Corporation System, registered agent :
4701Cox Road, Suite 285
Glen Allen, Virginia 23060**

BLUM CONSULTING ENGINEERS, INC.

**Serve: CT Corporation System, registered agent :
4701 Cox Road, Suite 285
Glen Allen, VA 23060**

JOHNSON CONTROLS, INC. :
(F/K/A TYCO SIMPLEX GRINNELL) :
 :
Serve: CT Corporation System, registered agent :
4701 Cox Road, Suite 285 :
Glen Allen, VA 23060 :
 :
and :
 :
CODE CONSULTANTS, INC., :
 :
Serve: Cogency Global Inc., registered agent :
250 Browns Hill Court :
Midlothian, Virginia 23114 :
 :
Third Party Defendants. :

THIRD PARTY COMPLAINT

COME NOW Hyatt Corporation and Tysons Corner Hotel I, LLC (“Third Party Plaintiffs”) by and through counsel, BONNER KIERNAN TREBACH & CROCIATA, LLP, and file their Third Party Complaint against Harvey-Cleary Builders, Callison RTKL, Inc (f/k/a RTKL Architects), Blum Consulting Engineers, Inc., Johnson Controls, Inc. (f/k/a Tyco Simplex Grinnell), and Code Consultants, Inc., (collectively “Third Party Defendants”), and state:

Parties, Jurisdiction & Venue

1. Third Party Plaintiff Hyatt Corporation is a corporation organized under the laws of the State of Delaware, with its principal office located in the State of Illinois. It is the operator of the Hyatt Regency Hotel in Tysons Corner, Virginia (the “Hotel”).
2. Third Party Plaintiff, Tysons Corner Hotel I, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal office located in the State of California. No members of Tysons Corner Hotel, I, LLC are citizens of Virginia.

3. Third Party Defendant Callison RTKL, Inc., is a corporation organized under the laws of the State of Maryland, with its principal office also located in Maryland.

4. Third Party Defendant Harvey-Cleary Builders, Inc., is a corporation organized under the laws of the State of Texas, with its principal office also located in Texas.

5. Third Party Defendant, Blum Consulting Engineers, Inc., is a corporation organized under the laws of the State of Texas, with its principal office also located in Texas.

6. Third Party Defendant, Tyco SimplexGrinnell, is a corporation organized under the laws of the State of Wisconsin, with its principal office also located in Wisconsin.

7. Third Party Defendant, Code Consultants, Inc., is a corporation organized under the laws of the State of Missouri, with its principal office also located in Missouri.

8. There is complete diversity in this matter and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332.

9. Venue is proper in this district in accordance with 28 U.S.C. § 1391(b)(2).

Facts

10. Third Party Plaintiffs incorporate all prior allegations by reference.

11. On April 12, 2019, Tzann Fang (“Fang”) filed a lawsuit against Third Party Plaintiffs in the Circuit Court for the City of Richmond, wherein it is generally alleged that the Third Party Plaintiffs caused Fang personal injuries through their negligent maintenance of a fire alarm

and/or fire alarm system at the Hotel. *See Exhibit A*, “The Fang Complaint,” enclosed. The Fang Complaint was subsequently removed to this Honorable Court.

12. The Third Party Plaintiffs contracted with Harvey-Cleary Builders and Callison RTKL, Inc., to perform services relating to the construction of the Hotel, which included the selection, design, and installation of the fire alarms and/or fire alarm system. The Third Party Plaintiffs deny they liable to Fang, whether in whole or in part. But should they be found liable, or otherwise resolve the claims made against them by Fang, the Third Party Plaintiffs are entitled to contractual indemnification, contribution, and equitable indemnification relief as stated herein, from Harvey-Cleary Builders, Callison RTKL, Inc., Blum Consulting Engineers, Johnson Controls, Inc. (f/k/a Tyco Simplex Grinnell), and Code Consultants, Inc.

13. Specifically, the Third Party Plaintiff, Tysons Corner Hotel, I, LLC, contracted with Harvey-Cleary Builders to construct the entire Hotel, including the selection, design, installation, and all other aspects of the fire alarms and/or fire alarm system. *See Exhibit B*.

14. Pursuant to Exhibit H of Exhibit B, Harvey-Cleary Builders must maintain insurance coverage listing Tysons Corner Hotel, I, LLC and all owned, managed, controlled, non-controlled and subsidiary companies, entities, joint ventures, lenders, ground lessors, LLC’s, partnerships and all their constituent partners and members. Furthermore, Exhibit B requires Harvey-Cleary Builders to indemnify and hold harmless the Third Party Plaintiffs.

15. Pursuant to Article 15 Indemnification of Exhibit B, the contract states:

Contractor shall, to the fullest extent permitted by Applicable Laws, upon demand defend (utilizing counsel acceptable to Owner), indemnify and hold harmless Owner, Owner Affiliates, Owner’s Agent (if any), Owner’s Representative, Construction Manager (if any), Lender(s) (if any), those persons and entities listed in Exhibit “H” – “Other

Indemnitees/Additional Insureds” attached hereto, any person or entity now having or thereafter acquiring an ownership or possessory interest in any portion of the Project, Site, Existing Improvements or Work (including, without limitation, buyers, lessors and tenants), each of them, and each of their respective directors, officers, partners, members, agents, employees, representatives, consultants, contractors, successors, assigns and insurers (“Indemnitee(s)”), from and against any and all Losses, whether real or alleged, arising out of, relating to or resulting from:

15.1.1 any act or omission of Contractor or any of its Subcontractors, of any Tier, or any person or entity for whose acts or omissions any of them may be liable;

15.1.2 the inaccuracy of any warranty or representation by Contractor given in accordance with or contained in this Construction Contract; or

15.1.3 any act of Contractor or any of its Subcontractors constituting an infringement upon any Intellectual Property Rights of any person or entity, unless such infringement is the result of a specification in the Contract Documents requiring Contractor to follow a particular design or process, or utilize a particular product, of a particular manufacturer or manufacturers.

16. Accordingly, the Third Party Plaintiffs demand the immediate involvement, participation and guidance from Harvey-Cleary Builders and its liability insurers to indemnify and undertake the defense of the Third Party Plaintiffs in the Fang Complaint.

17. Tysons Corner Holdings, LLC, also contracted with Callison RTKL, Inc. (f/k/a RTKL Architects) (“RTKL”) to serve as the lead architect in the design of the Hotel, including the design of the fire alarm system and selection of the fire detectors utilized. *See Exhibit C.*

18. Pursuant to Section 9.2.3 of Exhibit C, RTKL must maintain insurance coverage listing Tysons Corner Holdings, LLC, its agents, its affiliates, those additional persons or entities listed in Exhibit L of Exhibit C, and such other persons or entities as Tysons Corner Holdings, LLC may specify. The Third Party Plaintiffs are agents and affiliates with Tysons Corner Holdings, LLC, and thus are required to be an additional insured under this agreement. Furthermore, Article 9 of Exhibit C requires RTKL to indemnify and hold harmless the Third Party Plaintiffs.

19. Pursuant to Article 9 Indemnification and Insurance of Exhibit C, the contract states:

9.1.1 Basic Indemnity. Except as provided in Paragraph 9.1.3, below, to the fullest extent permitted by Applicable Laws, Architect shall upon demand defend (utilizing legal counsel acceptable to Owner), indemnify and hold harmless, Owner, Owner Affiliates, Owner's Agent (if any), Owner's Representative, Construction Manager (if any), Lender(s) (if any), those person s and entities listed in Exhibit "L" – "Other Indemnities/Additional Insureds" attached hereto, any person or entity now having or hereafter acquiring an ownership or possessory interest in any portion of the Project, Site, Existing Improvements of Work (including, without limitation, buyers, lessors, and tenants), each of them, and each of their respective directors, officers, partners, members, agents, employees, representatives, consultants, contractors, successors, assigns, and insurers ("Indemnitee(s))" from and against any and all Losses, whether real or alleged and regardless of whether caused in part by the acts or omissions (whether constituting active or passive negligence or otherwise) of an Indemnitee or its agents servants or independent contractors who are directly responsible to such Indemnitee, to the extent arising out of, relating to or resulting from:

.1 any act of omission on the part of the Architect, its Subconsultants, or any person or entity for whom the Architect or its Subconsultants may be legally liable constituting (a) ordinary or gross negligence, (b) breach of contract, (c) willful misconduct, (d) violation of Applicable Laws, or (e) professional negligence if and to the extent that such professional negligence is not covered by, or such Loss is not paid or fully paid for by the proceeds from, insurance provided by Architect or Subconsultant;

.2 the material inaccuracy of any representation by Architect given in accordance with or contained in this Agreement;

.3 except and to the extent attributable to a particular design, process or product of one or more particular manufacturers that Architect is expressly required by Owner ot use and with respect to which Architect has performed its obligation under Section 11.3, below, infringement upon any United States patent, trademark or copyright arising out of the acts or omissions of Architect or its Subconsultants in connection with performance of this Agreement.

20. Accordingly, the Third Party Plaintiffs demand the immediate involvement, participation and guidance from RTKL and its liability insurers to indemnify and undertake the defense of the Third Party Plaintiffs in the Fang Complaint.

21. In addition, Blum Consulting Engineers, Johnson Controls, Inc. (f/k/a Tyco Simplex Grinnell), and Code Consultants, Inc., all participated in, contributed, and undertook the

selection, design, and installation of the fire alarms and/or fire alarm system at the Hotel. The design, selection, and/or installation of those components and fire alarm system gave rise to the allegations contained in the Fang Complaint.

Count I – Contractual Indemnification (Harvey-Cleary Builders and RTKL)

22. Third Party Plaintiffs incorporate all prior allegations by reference.

23. Third Party Plaintiffs contracted with Harvey-Cleary Builders and RTKL, individually.

24. Under those contracts, Harvey-Cleary Builders and RTKL agreed to obtain and maintain insurance in which Third Party Plaintiffs are additional named insureds. Harvey-Cleary Builders and RTKL also agreed to hold the Third Party Plaintiffs, their officers, agents and employees, harmless from any and all claims made against Third Party Plaintiffs, which might arise out of the actions or omissions of Harvey-Cleary Builders and RTKL, respectively, or any subcontractors, agents or employees, of each.

25. A copy of the respective contracts is attached hereto and incorporated herein as Exhibits B and C, respectively.

26. As stated, Fang has commenced a lawsuit against Third Party Plaintiffs, alleging injuries and damages arising out of a defective fire alarm and/or fire alarm system. The design, selection, installation, and all other aspects of said fire alarms and/or fire alarm system were performed by Harvey-Cleary Builders and RTKL.

27. Third Party Plaintiffs deny having caused Fang the alleged injuries or damages. But should Third Party Plaintiffs be found liable, or otherwise pay money to Fang in satisfaction of a

judgment or in compromise of the claims against Third Party Plaintiffs, Third Party Plaintiffs assert that Fang's damages and claims were caused in whole or in part by the acts and/or omissions of Harvey-Cleary Builders and RTKL, in failing to meet their respective duty of care in performing the work contracted for with Third Party Plaintiffs.

28. Under the explicit indemnity provisions set forth in Exhibits B and C, Harvey-Cleary Builders and RTKL, are liable to Third Party Plaintiffs for the total amount of any judgment against Third Party Plaintiffs, and/or for the total amount of any payments made to Fang in compromise of their claims and are required to indemnify Third Party Plaintiffs, hold Third Party Plaintiffs harmless, and defend Third Party Plaintiffs in the Fang lawsuit.

WHEREFORE, Third Party Plaintiffs demand judgment against Harvey-Cleary Builders and RTKL, jointly and severally, for indemnification in an amount in excess of \$75,000.00 in compensatory damages, plus interest, attorney's fees, and costs, as permitted by law and by contract.

Count II – Equitable Indemnification (Blum, Simplex Grinnell, Code Consultants)

29. Third Party Plaintiffs incorporate all prior allegations by reference.

30. Blum Consulting Engineers ("Blum") prepared engineering design plans for the fire alarm system at the Hotel. Those plans specified the locations of the fire detectors, including the room where the incident that gave rise to Fang's Complaint occurred.

31. Johnson Controls, Inc. (f/k/a Tyco Simplex Grinnell) ("SimplexGrinnell"), prepared shop drawings for the fire alarm system at the Hotel and manufactured and/or sold the component parts that comprised the fire alarm system.

32. Code Consultants, Inc. (“Code Consultants”) prepared a fire protection and life safety analysis for the Hotel, which included specifications for the fire detectors and the fire alarm system.

33. Blum owed a duty of care to prepare the fire alarm system design plans in accordance with all applicable laws, regulations, or other governing authorities.

34. SimplexGrinnell owed a duty of care to prepare the shop drawings and supply the component parts for the fire alarm system at the Hotel in accordance with all applicable laws, regulations, or other governing authorities.

35. Code Consultants owed a duty of care to prepare the fire protection and life safety analysis for the Hotel in accordance with all applicable laws, regulations, or other governing authorities.

36. Blum, SimplexGrinnell, and Code Consultants breached that duty of care by failing to prepare their respective drawings, designs, plans, and/or supply components of the fire alarm system at the Hotel in accordance with all applicable laws, regulations, or other governing authorities.

37. Third Party Plaintiffs deny any and all liability for Fang’s claimed injuries and damages. However, in the event that Third Party Plaintiffs are adjudged liable to Fang, then Blum, SimplexGinnell, and Code Consultants must indemnify and hold harmless Third Party Plaintiffs for any such judgment, as well as attorneys’ fees and costs of defense.

38. Blum, Simplex Grinnell, and Code Consultants’ duty to indemnify the Third Party Plaintiffs is implied by law to prevent an unjust or unsatisfactory result.

WHEREFORE Third Party Plaintiffs demand judgment against Blum, SimplexGrinnell, and Code Consultants, jointly and severally, for indemnification in an amount in excess of \$75,000.00 in compensatory damages, plus interest, attorney's fees, and costs, as permitted by law and by contract.

Count III – Contribution (All Third Party Defendants)

39. Third Party Plaintiffs incorporate all prior allegations by reference.

40. On April 12, 2019, Fang filed a lawsuit against Third Party Plaintiffs in the Circuit Court for the City of Richmond, wherein it is generally alleged that the Third Party Plaintiffs Fang caused personal injuries through their negligent maintenance of a fire alarm and/or fire alarm system at the Hotel. *See Exhibit A*, "The Fang Complaint," enclosed.

41. As alleged in Exhibit A, Fang seeks a monetary judgment against Third Party Plaintiffs in an amount exceeding \$75,000.00.

42. The Third Party Defendants were responsible for the design, selection, and installation of the fire alarm and/or fire alarm system which gave rise to Fang's lawsuit.

43. Should Fang obtain a monetary judgment against Third Party Plaintiffs, or should Third Party Plaintiffs agree to a compromise settlement with Fang, Third Party Defendants are liable to Third Party Plaintiffs to pay each Third Party Defendant's proportionate share of the judgment and/or settlement, as well as Third Party Plaintiffs' costs and fees incurred in defending against the lawsuit brought by Fang.

WHEREFORE, as appropriate contribution, Third Party Plaintiffs demand judgment against Third Party Defendants, jointly and severally, in an amount in excess of \$75,000.00 in compensatory damages, plus interest, attorney's fees, and costs, as permitted by law and by contract.

DATE: September 9, 2019

Respectfully submitted,

**BONNER KIERNAN TREBACH &
CROCIATA, LLP**

/s/ Michael Trumble

Michael L. Pivor, Esq. (VSB #75312)

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*Counsel for Hyatt Corporation and Tysons
Corner Hotel I, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September, 2019, a true copy of the foregoing was served on all parties, via this Court's electronic filing system.

/s/ Michael Trumble

Michael Trumble